

Source: BOOK: International Handbook on Commercial Arbitration, J. Paulsson (ed.), Suppl. not specified

**The Foreign Awards (Recognition And Enforcement) Act 1961. No. 45 of 1961 (in force November 30 1961 ) as amended by Act No. 47 of 1973 (in force November 26 1973 )**

**1.**

- (1) This Act may be called the Foreign Awards (Recognition and Enforcement) Act, 1961.
- (2) It extends to the whole of India.

**2.**

In this Act, unless the context otherwise requires, “foreign award” means an award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960:

- (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the Schedule applies, and
- (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

**3.**

Notwithstanding anything contained in the Arbitration Act, 1940 or in the Code of Civil Procedure, 1908, if any party to an agreement to which Article II of the Convention set forth in the Schedule\* applies or any persons claiming through or under him commences any legal

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proceedings in any court against any other party to the agreement or any person claiming through or under him in respect of any matter agreed to be referred, any party to such legal proceedings may, at any time after appearance and before filing a written statement or taking any other step in the proceedings, apply to the court to stay the proceedings and the court, unless satisfied that the agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

#### 4.

(1) A foreign award shall, subject to the provisions of this Act, be enforceable in India as if it were an award made on a matter referred to arbitration in India.

(2) Any foreign award which would be enforceable under this Act shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Act to enforcing a foreign award shall be construed as including references to relying on an award.

#### 5.

(1) Any person interested in a foreign award may apply to any court having jurisdiction over the subject-matter of the award that the award be filed in court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified why the award should not be filed.

#### 6.

(1) Where the court is satisfied that the foreign award is enforceable under this Act, the court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

## 7.

(1) A foreign award may not be enforced under this Act:

(a) if the party against whom it is sought to enforce the award proves to the court dealing with the case that:

(i) the parties to the agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law of the country where the award was made; or

(ii) that party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(iii) the award deals with questions not referred or contains decisions on matters beyond the scope of the agreement.

Provided that if the decisions on matters submitted to arbitration can be separated from those not submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

(iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made; or

(b) if the court dealing with the case is satisfied that:

(i) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(ii) the enforcement of the award will be contrary to public policy.

(2) If the court before which a foreign award is sought to be relied upon is satisfied that an application for the setting aside or suspension of the award has been made to a competent authority referred to in sub-clause (v) of clause (a) of sub-section (1), the court may, if it deems proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to furnish suitable security.

## 8.

(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce:

- (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
- (b) the original agreement for arbitration or a duly certified copy thereof; and
- (c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

## 9.

Nothing in this Act shall:

- (a) prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Act had not been passed; or
- (b) apply to any award made on an arbitration agreement governed by the law of India.

## 10.

The Arbitration (Protocol and Convention) Act, 1937 shall cease to have effect in relation to foreign awards to which this Act applies.

**11.**

The High Court may make rules consistent with this Act as to:

- (a) the filing of foreign awards and all proceedings consequent thereon or incidental thereto;
- (b) the evidence which must be furnished by a party seeking to enforce a foreign award under this Act; and
- (c) generally, all proceedings in court under this Act.

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